

63G-4-201. Commencement of adjudicative proceedings.

(1) Except as otherwise permitted by Section 63G-4-502, all adjudicative proceedings shall be commenced by either:

- (a) a notice of agency action, if proceedings are commenced by the agency; or
- (b) a request for agency action, if proceedings are commenced by persons other than the agency.

(2) A notice of agency action shall be filed and served according to the following requirements:

(a) The notice of agency action shall be in writing, signed by a presiding officer, and shall include:

(i) the names and mailing addresses of all persons to whom notice is being given by the presiding officer, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the agency;

(ii) the agency's file number or other reference number;

(iii) the name of the adjudicative proceeding;

(iv) the date that the notice of agency action was mailed;

(v) a statement of whether the adjudicative proceeding is to be conducted informally according to the provisions of rules adopted under Sections 63G-4-202 and 63G-4-203, or formally according to the provisions of Sections 63G-4-204 through 63G-4-209;

(vi) if the adjudicative proceeding is to be formal, a statement that each respondent must file a written response within 30 days of the mailing date of the notice of agency action;

(vii) if the adjudicative proceeding is to be formal, or if a hearing is required by statute or rule, a statement of the time and place of any scheduled hearing, a statement of the purpose for which the hearing is to be held, and a statement that a party who fails to attend or participate in the hearing may be held in default;

(viii) if the adjudicative proceeding is to be informal and a hearing is required by statute or rule, or if a hearing is permitted by rule and may be requested by a party within the time prescribed by rule, a statement that the parties may request a hearing within the time provided by the agency's rules;

(ix) a statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;

(x) the name, title, mailing address, and telephone number of the presiding officer; and

(xi) a statement of the purpose of the adjudicative proceeding and, to the extent known by the presiding officer, the questions to be decided.

(b) When adjudicative proceedings are commenced by the agency, the agency shall:

(i) mail the notice of agency action to each party;

(ii) publish the notice of agency action, if required by statute; and

(iii) mail the notice of agency action to any other person who has a right to notice under statute or rule.

(3) (a) Where the law applicable to the agency permits persons other than the agency to initiate adjudicative proceedings, that person's request for agency action shall be in writing and signed by the person invoking the jurisdiction of the agency, or by that

person's representative, and shall include:

- (i) the names and addresses of all persons to whom a copy of the request for agency action is being sent;
- (ii) the agency's file number or other reference number, if known;
- (iii) the date that the request for agency action was mailed;
- (iv) a statement of the legal authority and jurisdiction under which agency action is requested;
- (v) a statement of the relief or action sought from the agency; and
- (vi) a statement of the facts and reasons forming the basis for relief or agency action.

(b) The person requesting agency action shall file the request with the agency and shall mail a copy to each person known to have a direct interest in the requested agency action.

(c) An agency may, by rule, prescribe one or more forms eliciting the information required by Subsection (3)(a) to serve as the request for agency action when completed and filed by the person requesting agency action.

(d) The presiding officer shall promptly review a request for agency action and shall:

- (i) notify the requesting party in writing that the request is granted and that the adjudicative proceeding is completed;
- (ii) notify the requesting party in writing that the request is denied and, if the proceeding is a formal adjudicative proceeding, that the party may request a hearing before the agency to challenge the denial; or
- (iii) notify the requesting party that further proceedings are required to determine the agency's response to the request.

(e) (i) Any notice required by Subsection (3)(d)(ii) shall contain the information required by Subsection 63G-4-203(1)(i) in addition to disclosure required by Subsection (3)(d)(ii).

(ii) The agency shall mail any notice required by Subsection (3)(d) to all parties, except that any notice required by Subsection (3)(d)(iii) may be published when publication is required by statute.

(iii) The notice required by Subsection (3)(d)(iii) shall:

- (A) give the agency's file number or other reference number;
- (B) give the name of the proceeding;
- (C) designate whether the proceeding is one of a category to be conducted informally according to the provisions of rules enacted under Sections 63G-4-202 and 63G-4-203, with citation to the applicable rule authorizing that designation, or formally according to Sections 63G-4-204 through 63G-4-209;

(D) in the case of a formal adjudicative proceeding, and where respondent parties are known, state that a written response must be filed within 30 days of the date of the agency's notice if mailed, or within 30 days of the last publication date of the agency's notice, if published;

(E) if the adjudicative proceeding is to be formal, or if a hearing is to be held in an informal adjudicative proceeding, state the time and place of any scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in a scheduled and noticed hearing may be held in default;

(F) if the adjudicative proceeding is to be informal, and a hearing is required by statute or rule, or if a hearing is permitted by rule and may be requested by a party within the time prescribed by rule, state the parties' right to request a hearing and the time within which a hearing may be requested under the agency's rules; and

(G) give the name, title, mailing address, and telephone number of the presiding officer.

(4) When initial agency determinations or actions are not governed by this chapter, but agency and judicial review of those initial determinations or actions are subject to the provisions of this chapter, the request for agency action seeking review must be filed with the agency within the time prescribed by the agency's rules.

(5) For designated classes of adjudicative proceedings, an agency may, by rule, provide for a longer response time than allowed by this section, and may provide for a shorter response time if required or permitted by applicable federal law.

(6) Unless the agency provides otherwise by rule or order, an application for a package agency, license, permit, or certificate of approval filed under authority of Title 32B, Alcoholic Beverage Control Act, is not considered to be a request for agency action under this chapter.

(7) If the purpose of the adjudicative proceeding is to award a license or other privilege as to which there are multiple competing applicants, the agency may, by rule or order, conduct a single adjudicative proceeding to determine the award of that license or privilege.

Amended by Chapter 276, 2010 General Session